

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHIGAN SPORTING GOODS,

Plaintiff-Appellant,

v

MERIDIAN TOWNSHIP,

Defendant-Appellee.

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UNPUBLISHED

April 6, 1999

No. 200363

Michigan Tax Tribunal

LC No. 00219655

Before: Markman, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Defendant township assessed plaintiff's personal property for the tax years 1991 through 1995 for purposes of determining the property's true cash value. Pursuant to Michigan law, this value resulted in property tax being imposed on the State Equalized Value (SEV). Const 1963, art 9, § 3; MCL 211.27a(1); MSA. 7.27(1)(1). Plaintiff contends that defendant's calculation methods resulted in assigning incorrect values to the property in that the imposed values bear no relationship to the true cash value of the property. Plaintiff appeals as of right from the Michigan Tax Tribunal's opinion and judgment affirming defendant's tax assessments. We affirm.

Plaintiff argues that the Tax Tribunal improperly affirmed defendant's tax assessments for four reasons: First, that the tribunal improperly applied an "overwhelming reliable evidence" burden of proof on plaintiff; second, that the tribunal improperly upheld assessments calculated using the property's purchase price plus freight, installation and sales tax; third, that the tribunal improperly upheld assessments calculated with reference to plaintiff's identity and profitability rather than the value inherent in the property itself; and finally, that the tribunal improperly presumed that defendant's use of the State Tax Commission (STC) manual was correct and failed to make its own findings with regard to the true cash value of the property. We find each of these claims to be without merit.

First, there is no evidence to support plaintiff's claim that the Tax Tribunal applied an "overwhelming reliable evidence" burden of proof standard on plaintiff in violation of MCL 205.737(3); MSA 7.650(37)(3). The passage within the tribunal's opinion and judgment to which plaintiff refers is merely a recitation of defendant's closing arguments and general contentions.<sup>1</sup> While defendant may

have suggested that overwhelming reliable evidence was necessary, there is no indication that the tribunal adopted this standard of review. Rather, the tribunal merely stated that, “Petitioner has the burden of proof in establishing the true cash value of the property,” citing MCL 205.737(3); MSA 7.650(37)(3); MCL 211.27(1); MSA 7.27(1); *Meadowlanes Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 483-84; 473 NW2d 636 (1991). Further, the tribunal found that plaintiff’s reliance on the American Society of Appraisers’ (ASA) definition of “fair market value-removal” was contrary to the statutory definition of “fair market value,” MCL 211.27(1); MSA 7.27(1), and that adopting the ASA definition was a matter properly left to the Legislature. In particular, the tribunal stated:

The gravamen of Petitioner’s true cash value contention is its use of the ASA definition of Fair Market Value-Removal... The legislature defines fair market value in MCL 211.27(1) and it is directly contrary to Petitioner’s contention that removal value is the best indicator of market value. Even assuming Petitioner was conceptually or academically correct in its contention, Petitioner fails to present reliable and credible evidence to support its valuation methodology over those methodologies having already been accepted as conforming to legislatively prescribed definitions and requirements, such as the In-Use multipliers of the STC Manual. The Tribunal has no power to redefine the meaning of fair market value as defined by the legislature.

In addition, the tribunal found that plaintiff had failed to present reliable and credible evidence to support its valuations. MCL 205.737(3); MSA 7.650(37)(3).

Second, plaintiff claims that the tribunal erred in upholding defendant’s valuation of plaintiff’s property using the usual selling price enhanced by the cost of freight, sales tax and installation. This Court has held that costs such as freight, sales tax, and installation may be properly considered in calculating the true cash value of personal property, absent evidence that they do not reflect true cash value. *Lionel Trains Inc v Chesterfield Twp*, 224 Mich App 350, 354; 568 NW2d 685 (1997). Plaintiff here, as in *Lionel Trains*, presented no actual market evidence that freight, sales tax, and installation should not be included in calculating true cash value. Rather, plaintiff presented a hypothetical scenario involving a purchaser forced, apparently through circumstances beyond his control, to sell the purchased property within one week of its purchase. While this Court agrees that in this situation, the purchaser-turned-seller would likely be unable to recoup freight sales tax and installation, plaintiff has presented no evidence indicating that this scenario reflected its own financial position, nor that such exigent circumstances were common in its marketplace.

Plaintiff asks this Court to rely on “common horse sense” to conclude that tax, freight and installation should not be considered in calculating true cash value. Plaintiff suggests that a buyer would not purchase a new piece of property and sell it immediately for the purchase price *plus* the tax, freight and installation costs incurred at the time of the original acquisition. This is likely true. However, few prudent buyers would attempt to do so. If the buyer’s intent was to immediately resell the property, he would likely not make the purchase unless he could recoup all of his costs (as well as a profit). Thus, plaintiff has created a hypothetical market that does not exist except in unusual situations.

Further, the market for used property is quite *likely* to include costs such as freight, sales tax and installation. A prudent business owner will consider a variety of factors in deciding whether to dispose of his or her property, including the *total* costs in acquiring property, the value already recovered from use of the property, the costs of acquiring replacement property, and so forth. Thus, ideally, a manufacturer who spends \$10,000 on a piece of equipment plus an additional \$5,000 in freight, sales tax and installation is not likely to sell that equipment unless he can recoup \$15,000 between the selling price and the financial benefit received from having used the equipment in the manufacturing process. In most cases, if there were no such financial benefit in acquiring the equipment, it would not have been purchased in the first place. Plaintiff's theory presumes that property owners generally lose money when they resell property. This is not necessarily the case, nor has plaintiff presented evidence to support this theory.

Finally, a prudent buyer considers these additional costs when deciding whether to purchase property; that is, is the property *worth* the purchase price plus the additional costs of acquiring it? Does it carry that much *value*? Using the previous example to illustrate this, the manufacturer will not purchase the equipment unless he or she is likely to realize *at least* a \$15,000 financial benefit from the equipment, be it in the manufacturing process, reselling the equipment, or a combination of such factors. Theoretically, the *value* of that equipment is at least \$15,000. If not, the prudent manufacturer will not spend \$15,000 to obtain it.

Plaintiff has failed to provide evidence that true cash value does not, as a rule, include costs beyond the property's purchase price. To the extent that plaintiff relies on *IBM v State of Michigan*, 220 Mich App 83, 86-87; 558 NW2d 456 (1996), such reliance is misplaced. *IBM* addresses *use* tax, not *property* tax. Use tax is not a tax on the *value* of property, but rather a tax measured by the *cost* of property. *Id.* *Lionel Trains, supra*, at 350, is controlling, and plaintiff's claim of error should fail.

Plaintiff's third argument is that the tribunal improperly upheld assessments calculated with reference to plaintiff's identity and profitability, rather than the value inherent in the property itself. However, there is no evidence that defendant relied on, or even considered, plaintiff's profitability in determining the value of the property. Rather, defendant valued the property consistently with any business, profitable or unprofitable, making ordinary use of its personal property. Plaintiff's claim is precisely the claim made by the plaintiff in *Lionel Trains, supra*, to wit, "that the only multiplier that is truly indicative of the fair market value of personal property, even usable or in-use personal property, is the economic residual multiplier and not the in-use multiplier." *Id.* at 353. This Court has specifically rejected that argument, and plaintiff has advanced no new arguments to support its theory. *Id.* at 354, citing *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

Plaintiff's fourth and final claim of error is that the tribunal improperly presumed that defendant's use of the STC manual was correct and that it failed to make its own findings with regard to the true cash value of the property. The tribunal did not err in this regard. The burden of proof is on plaintiff to establish the true cash value of its property when challenging a personal-property tax assessment. MCL 205.373(3); MSA 7.650(37)(3). This Court has recognized that proper use of the STC manual

valuation methods results in the uniform taxation of property as required by the Michigan Constitution. *Lionel Trains, supra* at 351-52, citing Const 1963, art 9, § 3. Furthermore, despite plaintiff's claims to the contrary, Michigan law requires that a tax assessor use the STC manual or a manual approved by the STC in valuing property. MCL 211.10e; MSA 710(5).<sup>2</sup>

In reviewing tax assessments, the tribunal is required to "apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Jones & Laughlin, supra* at 353 (citations omitted). The tribunal may not merely rely on a defendant's assessment, but must make its own findings of fact to arrive at a "legally supportable conclusion of true cash value." *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987). The record indicates that the tribunal was well aware of these duties. On appeal, this Court will affirm tribunal findings of fact that are supported by competent, material, and substantial evidence. *Jones & Laughlin, supra* at 352.

In the present case, the tribunal considered plaintiff's evidence and proposed valuation methods and considered defendant's use of the STC manual. The tribunal held that (1) plaintiff had failed to meet its burden of proof and (2) that defendant had sufficiently supported its valuation methods. The tribunal was not required to conduct its own appraisal of plaintiff's property. Rather, the tribunal fulfilled its duties by determining, as a factual matter, that plaintiff's proposed calculation methods were not reliable or credible evidence of market value, and that defendant provided adequate support for its calculation methods, allowing the tribunal to affirm these methods as the most accurate under the circumstances. This Court finds that the tribunal committed no error in this regard.

Affirmed.

/s/ Stephen J. Markman

/s/ E. Thomas Fitzgerald

/s/ Brian K. Zahra

<sup>1</sup> "Respondent relies on *AEG Mictron, Inc v City of Troy*, MTT Docket No. 192743 at 18, May 6, 1996, C/A Docket No. 195012, for the proposition that Tax Tribunal case law holds that the STC multipliers are to be used unless other overwhelming evidence of market value is presented."

<sup>2</sup> "All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the state tax commission . . . as a guide in preparing assessments."